THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12016 OF 2006

DATED: 13-12-2006

Between :
A.P. Housing Board HIG (SFS)
Phase X Allottees Welfare Association. ... Petitioner

And

The A.P. Housing Board, rep. by its
Vice-Chairman & Housing Commissioner,
Gruhakalpa, MJ Road, Hyderabad and another. .. Respondents

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WRIT PETITION NO.12016 OF 2006

ORDER :

The petitioner is an Association registered under the provisions of the Andhra Pradesh Societies Registration Act, 2001 with the object of protecting the welfare of allottees of HIG houses under Phase-X situated at Bhavanipuram, Vijayawada by the A.P. Housing Board (for short, 'the Board'). It is stated that during the year 1980 large extents of land situated at Bhavanipuram, Vijayawaqda were acquired invoking the provisions of the Land Acquisition Act, 1894. Having developed the said lands into colonies, the 1st respondent Board issued a notification dated 7-1-2003 in local dailies proposing to sell HIG houses under Self-Finance Scheme in Phase-X of Bhavanipuram, Vijayawada. Pursuant to the same, the members of the petitioner association and others submitted their applications paying the requisite fee for getting their names enrolled. On 9-7-2003 lots were drawn among the applicants and 90 members were selected and allotted houses, but no specific house numbers were allotted. Thereafter, as required by the 1st respondent the allottees made a further payment of Rs.81,000/- each.

While so, the 1st respondent addressed separate letters dated 11-8-2004 to all the allottees informing that the cost of the land was revised from Rs.1,200/- to Rs.2,400/- per sq.yard and therefore the cost of each house would be Rs.11,17,000/- instead of Rs.9,10,000/-. Aggrieved by the said enhancement, the members of the petitioner association filed W.P.No.5995 of 2005 which is pending

before this Court. In the meanwhile the 1st respondent had taken up construction of 80 independent houses and completed the same by March, 2006. The members of the petitioner association were under an impression that a separate draw would be held by the Board for allotment of the said independent houses. Without doing so, the 1st respondent Board allotted the said houses to some of the allottees who had given their consent for payment of the additional cost for construction of compound wall and roof projection. The said members were allotted houses in the 1st and 2nd row of Phase-X. It is alleged that the said allotment was made by the 1st respondent Board without intimation to the members of the petitioner Association and in spite of the representations made by them protesting the impugned action the respondents 1 and 2 failed to respond.

Hence, this writ petition seeking a Mandamus declaring the action of the respondents in allotting the houses to 17 allottees without notice and intimation to other allottees under HIG (SFS) Phase-X as arbitrary and illegal and consequently to direct the respondents to conduct lottery among all the allottees for allotment of houses in HIG, Phase-X.

I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondents.

The learned Counsel for the petitioner contended that the action of the 1st respondent in picking and choosing 17 allottees of their choice out of 80 who are also equally placed is arbitrary and illegal. It is contended that for the purpose of allotment of houses, the 1st respondent ought to have drawn lots among all the 80 applicants.

The learned Counsel appearing for the respondents submitted that 17 houses were constructed by the 1st respondent with the consent given by some of the allottees for additional works such as construction of compound wall and roof projection, who had also paid additional amounts for the said purpose. Hence, the other allottees,

who did not give their consent for such additional works and did not make payments, cannot be said to be equally placed and they are not entitled for allotment of the said 17 houses.

In the counter-affidavit filed on behalf of the respondents, it is explained that lots were drawn among the 100 applicants on 9-7-2003 and 90 applicants were selected in the said draw for allotment of houses and the balance 10 applicants were kept in waiting list. It is further stated that specific house numbers have not been allotted at that stage. As per the practice of A.P. Housing Board the specific house numbers will be allotted by conducting another draw of lots among the allottees after completing the construction of houses. It is further stated that the 1st respondent – A.P. Housing Board on the representations received from some of the allottees, proposed to take up some additional works i.e., construction of compound walls and roof projections to the houses. A letter dated 7-7-2005 was issued to all the allottees asking them to give their willingness for the proposed additional works for which extra cost has to be paid, on or before 16-7-2005. The additional cost to be paid for the said additional works was also specified in the letter making it clear that the works would be commenced only after receipt of the amount for the same subject to municipal rules provided the slab was not already casted as on that date. In response to the said letter, out of the 80 allottees only 25 allottees submitted their willingness and even out of those 25 allottees who have submitted their willingness, only 17 allottees have paid the requisite amounts. Therefore, it was proposed to provide the additional works to 17 houses only.

It is clear from the counter-affidavit, the contents of which are not contradicted, that the 1st respondent Board has called upon all the allottees by letter dated 7-7-2005 to give their willingness on or before 16-7-2005 for construction of compound wall and certain other additional works. Only 17 allottees had responded and made payment for additional works. Accordingly a drawal of lots was conducted on

26-10-2005 among the said 17 allottees so as to allot the said 17 houses. For the remaining allottees drawal of lots would be conducted separately and they would be allotted respective house numbers.

Thus, it is clear that the members of the petitioner association who did not opt for additional works cannot be placed on par with 17 allottees who expressed their willingness pursuant to the letter dated 7-7-2005 for additional works. Hence, the contention that the action of the 1st respondent was violative of Article 14 of the Constitution of India is without any substance. Admittedly, the impugned allotment was only in respect of the 17 houses which were provided additional works after receiving the cost of the same from the respective allottees. No prejudice can be said too have caused to the petitioners by the said allotment since they did not make any payment for the additional works and consequently not entitled for allotment of the said 17 houses. Hence, the impugned action cannot be held to be arbitrary or unreasonable.

At any rate as held by the supreme Court in BAREILLY DEVELOPMENT AUTHORITY v. AJAY PAL SINGH[1] the rights and obligations inter se the allottees and the 1st respondent Board are governed by the terms and conditions of the contract entered into between them. Therefore the petitioners cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India particularly in the absence of allegations of mala fides against any of the respondents.

For the aforesaid reasons, the Writ Petition which is devoid of merit is hereby dismissed. No costs.

Needless to mention that the interim order granted earlier shall stand vacated.

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G. ROHINI, J.

Dt. 13-12-2006

gbs

[1] A./IR 1989 SUPREME COURT 1076